IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.475 OF 2007

Bhavanishankar Gomaji Bhatt ..Applicant.
Vs.
Shri Suresh Sudarshanprasad Agarwal ..Respondent.

Mr.Sandesh Patil, adv. for the Applicant.
Mr.Rajesh Behere, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : NOVEMBER 21, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. Admittedly, the respondent was the landlord and the applicant was a tenant. The landlord filed the suit for eviction on several grounds including ground of nonpayment of rent in spite of service of notice. The suit was contested by the defendant/tenant on the ground that landlord had not made necessary repairs and huge amount was spent by himself and another tenants collectively for carrying out repairs of the building and, therefore, the rent was not paid. The learned trial Court dismissed the suit accepting the plea of the defendant though it came to conclusion that he had failed to make the payment of rent. Civil Appeal No.40 of 2006 preferred by the plaintiff was allowed by the appellate Court and, therefore, the tenant has

preferred this Civil Revision Application.

3. Record reveals that the defendant/applicant had not paid the rent from December, 1998. On 16-2-2000 the landlord served the notice on him to pay the arrears of rent but he failed to make the payment. On 30th April, 2001, the landlord filed the suit for eviction. Notice/Summons of the suit was served and on 15-10-2001 written statement was also filed by the defendant. He actually deposited the arrears of rent on 5-2-2005. The learned Appellate Court clearly noted that the tenant had firstly failed to make the payment of rent within 90 days after service of notice by the landlord and, therefore, in spite of service of the suit summons, he had failed to pay or tender the arrears of rent within 90 days from the date of service. The learned Appellate Court noted that in view of this the protection against eviction was not available to the tenant under Section 15(3) of the Maharashtra Rent Control Act, 1999. The learned counsel for the applicant/tenant contended that the applicant and other tenants have spent huge amounts for repairs of the building because the landlord had failed to carry out necessary repairs in spite of notice from the Municipal Corporation. He was simply interested in eviction and not in repairs. Section in Maharashtra Rent Control Act provides that if the landlord fails to

carry out necessary repairs in spite of notice, the tenant may make the repairs and recover or deduct the expenses from the rent. Even though for a moment, it is accepted that the landlord had failed to carry out repairs and the tenant was required to spend money for the same, second proviso to Section 14(2) of the Maharashtra Rent Control Act provides that the amount so deducted by the tenant or recoverable in any year on account of expenditure on repairs or maintenance in any year shall not exceed one-fourth of the total rent by the tenant for that year. In view of this proviso, the tenant could recover or deduct from the rent an amount of expenditure on repairs subject to the limit of 1/4th of the total rent payable paid during that year. In the present case the tenant had not paid the rent for more than five years beginning with December, 1998 till 5th February, 2005 when he finally deposited the amount in the Court. In view of this, I find no substance in the plea of the defendant/tenant. Impugned judgment passed by the Appellate Court does not suffer from any illegality, irregularity or perversity.

4. In the result, revision application stands dismissed.

5. At this stage the learned counsel for the tenant/applicant makes a prayer that the applicant is a

75 years old person. He is poor and he is occupying premises for the last forty years and the suit premises is not bonafide required by the landlord for his personal use. He states that the applicant will give undertaking in writing that he would vacate the premises within one year. The learned counsel for the landlord/respondent has no objection to grant time of six months. In view of the circumstances and the reasons given by the learned counsel for the tenant, in my opinion the applicant may be given reasonable time of about one year. Therefore, subject to the applicant giving written undertaking to this Court within two weeks to vacate the premises within one year from this date and that he would not create any third party interest or shall not damage the premises in any manner, decree for eviction shall remain stayed for a period of one year from this day. If the applicant fails to file written undertaking within the stipulated period, the landlord shall be at liberty to execute the decree at any time.

[J.H.BHATIA, J.]